



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

May 17, 2017

The Honorable Greg Walden, Chairman
Committee on Energy and Commerce
Congress of the United States
House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone, Ranking Member
Committee on Energy and Commerce
Congress of the United States
House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Pallone:

COMMENTS IN OPPOSITION TO PROVISIONS OF HOUSE OF REPRESENTATIVES DISCUSSION DRAFTS: (1) HYDROPOWER POLICY MODERNIZATION ACT OF 2017; (2) PROMOTING CLOSED-LOOP PUMPED STORAGE HYDROPOWER ACT; AND (3) PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NON-POWERED DAMS ACT

The California State Water Resources Control Board (State Water Board) would like to express its concerns with the following House of Representatives Legislative Discussion Drafts: (1) Hydropower Policy Modernization Act of 2017; (2) *Promoting Closed-Loop Pumped Storage Hydropower Act*; and (3) *Promoting Hydropower Development at Existing Non-Powered Dams Act* (collectively Hydropower Discussion Drafts). While the State Water Board supports the goals of energy infrastructure modernization, it opposes several provisions as drafted because the Hydropower Discussion Drafts would reduce or eliminate essential protections for California's natural resources.

The Hydropower Discussion Drafts would seriously impact the mandatory conditioning authority of the State Water Board under Section 401 of the Clean Water Act, as well as similar authorities of federal agencies. State and federal agencies serve an essential role in the Federal Energy Regulatory Commission's (Commission) hydropower licensing process. The Hydropower Discussion Drafts designate the Commission as the sole lead agency over federal authorizations related to an application for a license, license amendment, or exemption for a hydropower project. As the sole lead agency, the Commission would establish and control the timeline for the hydropower licensing process for all aspects of federal authorization, including Section 401 of the Clean Water Act. As such, the Commission could limit the State Water Board and federal agencies' time to complete their respective actions which could adversely impact the agencies' ability to comply with necessary state and federal laws and may negatively impact public and environmental health.

As noted in this letter, the State Water Board is particularly concerned about provisions of the Hydropower Discussion Drafts that would undermine states' authorities under Section 401 of the Clean Water Act. As former Chief Justice Rehnquist observed, there has been a "consistent thread of purposeful and continued deference to state water law by Congress." (*California v. U.S.* (1978) 438 U.S. 645, 653.) This "cooperative federalism" is epitomized by Section 401 of the Clean Water Act, which authorizes states to set conditions to protect the waters of their states, and provides that review

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

of conditions of certification is in state court, not by federal agencies. In so doing, Section 401 preserves both state authority and the integrity of state procedures and state institutions in overseeing how state agencies exercise that authority. Consistent with Congress' usual respect for state rights in this area, this structure must be preserved. The Hydropower Discussion Drafts inappropriately place limitations on state rights in this area by placing Section 401 of the Clean Water Act in the definition of Federal Authorization and under the Commission's jurisdiction.

The State Water Board recognizes the importance of hydropower as a clean energy source that helps provide grid reliability and supports the goal of promoting efficiencies in the Commission's licensing of hydropower projects. To promote such efficiencies, in 2013, the State Water Board entered into a memorandum of understanding¹ with the Commission to coordinate pre-application procedures and schedules between the two agencies. Since implementation, the memorandum of understanding has improved coordination between the State Water Board and the Commission, and is beginning to streamline portions of the licensing process. The State Water Board acknowledges that it has a pending backlog of water quality certification applications, due in part to California's recent drought, and we are committed to acting upon these applications as expeditiously as possible. The State Water Board opposes provisions of the Hydropower Discussion Drafts because they may result in harm to California's water quality and associated beneficial uses, public lands, and fish and wildlife by removing key state and federal authorities designed to protect the environment and the public enjoyment of the environment. Specific comments and concerns are provided in Attachment A. Key provisions of the Hydropower Discussion Drafts are provided in Attachment B for ease of reference in reviewing the State Water Board's comments.

I appreciate your consideration of these comments and look forward to solutions that improve our energy security and infrastructure while protecting the environment. Please feel free to contact Chief Deputy Director Eric Oppenheimer at 916-445-5960, or Legislative Director Robert Egel at 916-341-5255, if you would like to discuss this matter further.

Sincerely,



Felicia Marcus
Chair

Attachment A: Comments in Opposition to Provisions of the Hydropower Discussion Drafts

Attachment B Key Provisions of Hydropower Discussion Drafts

cc: Members of the California Congressional Delegation

¹ Memorandum of Understanding between the Federal Energy Regulatory Commission and the California State Water Resources Control Board Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California (November 19, 2013).

ATTACHMENT A:
COMMENTS ON HOUSE OF REPRESENTATIVES DISCUSSION DRAFTS:

- (1) HYDROPOWER POLICY MODERNIZATION ACT OF 2017;
(2) PROMOTING CLOSED-LOOP PUMPED STORAGE HYDROPOWER ACT; AND
(3) PROMOTING HYDROPOWER DEVELOPMENT AT EXISTING NON-POWERED DAMS ACT

The California State Water Resources Control Board (State Water Board) is submitting comments **in opposition to** provisions of the following House of Representatives Legislative Discussion Drafts: (1) *Hydropower Policy Modernization Act of 2017* (HPMA); (2) *Promoting Closed-Loop Pumped Storage Hydropower Act* (CPSHA); and (3) *Promoting Hydropower Development at Existing Non-Powered Dams Act* (PHDA)(collectively Hydropower Discussion Drafts) as drafted on March 22–23, 2017. A summary of the State Water Board’s primary concerns associated with provisions of the Hydropower Discussion Drafts include, but are not limited to those provided below. Attachment B provides a copy of key provisions of Hydropower Discussion Drafts for reference.

Hydropower Policy Modernization Act of 2017

HPMA, Section 3: Hydropower Licensing and Process Improvements

Per HPMA Section 3 (proposed Federal Power Act Section 34(a)&(b)), the Federal Energy Regulatory Commission (Commission) would be the lead agency for coordinating all federal authorizations for hydropower facilities, including issuance of water quality certifications under Section 401 of the federal Clean Water Act. For the State of California, the State Water Board is the designated agency responsible for implementing the Clean Water Act. Under Section 401 of the Clean Water Act, the State Water Board develops, issues, and enforces water quality certifications to ensure existing and new hydropower projects are constructed and operated in compliance with water quality standards. These water quality certifications become part of the Commission’s license and provide assurances that hydropower projects will be operated in a manner that is protective of water quality and beneficial uses of water for the duration of a project’s 30-50 year license. States and other federal mandatory conditioning agencies (e.g., National Marine Fisheries Service, United States Forest Service, Bureau of Indian Affairs, United States Fish and Wildlife Service) have only this one opportunity to condition a hydropower project as part of the relicensing or licensing process for the project’s 30–50 year license term, with the exception of the applicant pursuing a licensing amendment or reopeners provided through mandatory conditions to account for changing environmental conditions or standards. **The State Water Board opposes HPMA provisions appointing the Commission as lead agency for the purposes of coordinating all applicable federal authorizations, which would include Section 401 of the Clean Water Act.**

HPMA Section 3 (proposed Federal Power Act Section 34(c)), establishes a process for setting a schedule for the review and disposition of each federal authorization. The schedule process would be developed in consultation with appropriate federal agencies, and subject to public comment. These schedule provisions do not require the Commission to develop the schedule process with appropriate state agencies. Section 401 of the federal Clean Water Act provides state agencies with mandatory authority in the Commission’s licensing, relicensing, and license amendment processes. The State Water Board is the California state agency with Clean Water Act Section 401 authority and should be included in development of the Commission’s schedule process. For the Commission to account for state requirements in its schedule process, it must consult with the appropriate state agencies. **The State Water Board opposes the development of a schedule process without the Commission consulting with appropriate state agencies.**

HPMA Sections 3 (proposed Federal Power Act Sections 34(d)(1) & (e)), would provide the Commission with exclusive authority over the establishment of schedules for license, license

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amendment, and license exemption applications. By granting the Commission control over the timeframe for licensing, agencies and Indian tribes may not have sufficient time to complete their respective actions considered as part of federal authorization. In addition, the license applicants may also be limited by the new schedule provisions as an applicant cannot elect to take additional time to resolve a project limitation, which is often essential to working through technical issues and keeping the licensing process moving forward in a collaborative and effective manner.

HPMA Section 3 (proposed Federal Power Act Section 34(g)) requires the State Water Board to consider the scope of environmental review as recommended by the Commission, but does not require the Commission consider the scope of environmental review as determined necessary by the State Water Board to assess project impacts to water quality. Often state agencies are more informed about project related environmental impacts that need to be addressed related to public and environmental health. Experience with existing licensing processes has demonstrated that the Commission does not require the studies or development of information that state and other federal agencies find necessary to be able to set conditions protective of the resources the agencies are charged with protecting. In such cases, agencies must develop the information on their own or use their independent authority to request or require the information from the applicant. Leaving the agency to develop the information often involves substantial time and resources that would likely not accommodate the proposed schedules. **The State Water Board opposes these provisions as the Commission's schedule may not provide sufficient time to complete studies that would be necessary as part of the California Environmental Quality Act (CEQA). In addition, these provisions do not provide schedule flexibility for the applicant and other participants to collaboratively resolve unforeseen issues during the Commission's license, license amendment, or license exemption processes.**

HPMA Section 3 (proposed Federal Power Act Section 34 (h)(1) & (2)) allows an agency or Indian tribe that will not meet the Commission's schedule to request an extension from the Commission, and limits any Commission granted extension to 90 days. In many instances, a maximum 90 day extension is insufficient. When the Commission develops a schedule as described in the above provisions, the Commission will be unable to accurately account for every situation that could result in a delay to the license, license amendment, or license exemption processes. Some delays during the Commission's processes can require an additional year or more to resolve, especially delays caused by environmental conditions such as the recent drought in California.

In other situations, environmental issues unknown at the time the Commission develops its schedule could result in additional studies and delays. As discussed above, the Commission does not always require the applicant to complete studies needed for CEQA compliance. As a result, the CEQA lead agency may need to require additional studies or data collection to comply with CEQA requirements which may exceed the 90 day maximum extension allowed by the Commission in this provision.

In 2014, the California state legislature passed Assembly Bill 52¹ which amended the California Public Resources Code² to require CEQA lead agencies to identify tribal cultural resource impacts and mitigation as part of the CEQA process. This new CEQA requirement includes both State

¹ Gatto 2014, Chapter 532

² Sections 21073, 21074, 21080.3.1, 210802.3.2, 21082.3, 21083.09, 21084.2, and 21084.3

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and federally recognized Indian tribes, which is a broader scope of tribal cultural resource identification than required by the Commission under federal law.

In addition to requiring the identification of impacts and mitigation for tribal cultural resources, CEQA requires, upon request of the tribe, formal consultation between the tribe and the CEQA lead agency. In formal consultation, the CEQA lead agency and the tribe will consult to identify potential impacts to tribal cultural resources and attempt to reach agreement on mitigation to reduce impacts to tribal cultural resources. The timeline for completing formal consultation cannot accurately be predicted in the initial Commission schedule development process and as a result could exceed the 90 day extension limit proposed by these provisions. Limiting the schedule extension to 90 day may not allow for the completion of formal consultation with Indian tribes and could result in adverse impacts to tribal cultural resources.

Furthermore, these provisions do not describe the actions the Commission could take if an agency or Indian tribes fails to meet a deadline within the schedule or schedule extension established by the Commission. Failure to identify Commission actions for missed deadlines could provide the Commission with the discretion to deem the conditioning agency's authority waived and allow the Commission to move forward in license, license amendment, or license exemption processes in the absence of conditions that are necessary to ensure that hydropower projects are constructed and operated in a manner that is protective of environmental and tribal cultural resources. These provisions do not identify the remedies or penalties if the Commission or the license applicant fails to meet a deadline or if a delay caused by the Commission or the license applicant results in an agency or Indian tribe missing a deadline. In these situations, an agency or Indian tribe could miss a deadline at no fault of its own.

Agencies, applicants, and Indian tribes are unable to anticipate variables that could create delays that result in failing to meet a Commission-prescribed deadline, just as the Commission is unable to anticipate the factors that could lead to delays in the relicensing of hydropower projects. The Commission, agencies, and Indian tribes need flexibility to develop protective conditions based on thorough and complete assessment of the project impacts and available information rather than based on the need to meet a hard deadline with the only option of extension limited to 90 days and upon approval by the Commission. **The State Water Board opposes these provisions as the limited 90 day extension may not provide sufficient time to complete requirements of California state law or tribal cultural resource consultation as required in California Public Resources Code.**

HPMA Section 3 (proposed Federal Power Act Section 37(a)(7)&(8)) would provide a maximum of 120 days for agencies and Indian tribes to provide their conditions to the Commission for project upgrades (license amendments), and require the Commission to take final action on the license amendment applications no later than 150 days from the Commission's notice of the project. This arbitrary timeframe is insufficient to allow for the State Water Board to comply with its responsibilities under Section 401 of the Clean Water Act and CEQA.

HPMA Section 3 (proposed Federal Power Act Section 37(a)(9)) limits the Commission's conditioning of license amendments to those: (1) necessary to protect public safety; or (2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality directly caused by the construction and operation of the qualifying project upgrade. This provision excludes

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consideration of impacts indirectly caused by a project. No definition is provided for “impacts directly caused by the construction and operations of the project.” The State Water Board may have a different determination of direct impacts than the Commission. For example, the State Water Board may consider stream flow impacts to riparian habitat and associated federally listed species which depend upon the riparian habitat as a direct impact associated with project operations.

The State Water Board opposes these provisions of Sections 3, as presented in HPMA.

Promoting Close-Loop Pumped Storage Hydropower Act

CPSHA Section 2: Closed-Loop Pumped Storage Projects

Per CPSHA Section 2(a)(1)(A)&(B) (proposing to amend Part I Federal Power Act (16 U.S.C. 792 et seq.)), a closed-loop pumped storage project is defined as a project: (1) in which the upper and lower reservoirs do not impound or directly withdraw water from navigable waters; or (2) that is not continuously connected to a naturally flowing water feature. The State Water Board recommends that both criteria be required to define a project as a closed-loop pumped storage project. California waterways associated with hydropower projects may be disconnected from “natural flowing water features” as a result of drought, seasonal water diversion, or hydropower project operations. A project should not be exempted solely on the basis that it is intermittently disconnected from a “naturally flowing water feature.” Disconnection from a naturally flowing water feature may provide rationale to evaluate measures to improve connection, where appropriate. In addition, these provisions do not define what qualifies as a naturally flowing water feature. Given that most waterways in California have been altered from their natural state, the State Water Board is concerned about how this broad definition may be interpreted.

Also per CPSHA Section 2(d) (proposing to amend Part I Federal Power Act (16 U.S.C. 792 et seq.)) the Commission would be prohibited from imposing conditions under Section 4(e), 10(a), 10(g), and 10(j) of the Federal Power Act. Additionally, the Commission could only impose conditions on closed-loop pumped storage projects that are: (1) necessary to protect public safety; or (2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the project, as compared to the environmental baseline existing at the time the Commission completes its environmental review. The majority of projects that require certifications from the State Water Board are existing hydropower projects undergoing relicensing by the Commission that have no, or limited, environmental conditions in their existing licenses. Use of an environmental baseline at the time the Commission completes its environmental review and limiting conditions to protection of public safety and to prevent loss of, or damage to, or mitigation of, adverse effects on fish and wildlife resources directly caused by the project when compared with this baseline is inadequate to protect resources and address the ongoing impacts of these projects that are not addressed under existing license conditions.

This provision excludes consideration of impacts indirectly caused by a project. No definition is provided for “impacts directly caused by the construction and operations of the project.” There is no consideration of threatened or endangered species or consideration of potential discharges

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from the facility to adjacent surface water bodies. Construction and operation of such facilities could have dramatic impact on the environment.

This provision also excludes consideration of impacts on water quality or public health, except to the extent that they involve impacts on fish and wildlife resources. Conditions to protect water quality and other beneficial uses of water, beyond protection of fish and wildlife resources, should be established as part of the Commission's licensing of closed-loop pumped storage hydropower projects. The exclusion of water quality issues other than impacts on fish and wildlife is inappropriate and could result in environmental impacts.

The State Water Board opposes these provisions of Sections 2, as presented in CPSHA.

Promoting Hydropower Development at Existing Non-Powered Dams Act

PHDA Section 2: Promoting Hydropower Development at Existing Non-Powered Dams

PHDA Section 2 (proposing to amend Part I Federal Power Act (16 U.S.C. 792 et seq.) would create a new class of projects that are exempt from the Federal Power Act's licensing requirements. The new exemption would apply to new hydropower projects being constructed on existing non-hydropower dams if the project did not result in changes to storage, control, withdrawal, diversion, release, or flow operations of the associated non-hydropower dam.

Per PHDA Section 2(a)(2), prior to the granting of an exemption the Commission must consult with the United State Fish and Wildlife Service, National Marine Fisheries Service, the State agency exercising administrative control over the fish and wildlife resources, any Indian tribes affected by the project, and any Federal department supervising any public land or reservation occupied by the project. This provision does not require the Commission to consult with the State agency authorized to administer Clean Water Act programs. State agencies charged with implementing the Clean Water Act and ensuring hydropower and other projects comply with water quality standards should also be consulted with in the exemption or licensing of these projects. To do otherwise is in conflict with the environmental protections delegated to the states under the Clean Water Act.

PHDA Section 2(a)(3) limits the Commission's conditioning of license amendments to those: (1) necessary to protect public safety; or (2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the qualifying facility, as compared to the environmental baseline existing at the time the Commission grants the license exemption. See related comments in CPSHA, Section 2(d).

Per PHDA Section 2(a)(7), the Commission's jurisdiction is limited only to the qualifying facility exempted and any associated primary transmission line. The Commission's jurisdiction shall not include any conduit, dam, impoundment, shoreline or other land or any other project work associated with the qualifying facility exempted. Limiting the Commission's jurisdiction limits the extent of environment review and assessment associated with the project, which could negatively impact surrounding environmental resources. Other project works such as access roads may have impacts to water quality or other resources. As a real-world example, Lake Clementine

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Hydro LLC's Lake Clementine Hydroelectric Project (LCH project) was proposed on an existing non-hydropower dam in Northern California. The LCH project was proposed as a run-of-the-river facility that would not change the storage, control, withdrawal, diversion release, or flow operations of the non-hydropower dam. Though the LCH project was not proposing to change flow or releases for the non-hydropower dam, it may have negatively impacted water quality by changing the depth at which water is withdrawn from the non-hydropower dam's reservoir. Many non-hydropower dams in California were constructed to retain sediment, including legacy sediments from historic gold mining operations that often are contaminated with mercury and other heavy metals. By taking water from deeper in the reservoir, the LCH project could have transported mercury or other contaminants downstream into an area of with high recreation value. Without State Water Board review and input, the LCH project may have created a public health and environment hazard. With appropriate review and conditioning, this hazard can be avoided, but limiting the Commission's jurisdiction would prevent that review and conditioning.

The State Water Board opposes these provisions of Sections 2, as presented in PHDA.

ATTACHMENT B:
KEY PROVISIONS OF HOUSE OF REPRESENTATIVES DISCUSSION DRAFTS:
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For ease of reference in review of the comments submitted by the California State Water Resources Control Board (State Water Board) in Attachment A, this document contains key provisions of the House of Representatives Discussion Drafts: (1) *Hydropower Policy Modernization Act of 2017* (HPMA); (2) *Promoting Closed-Loop Pumped Storage Hydropower Act* (CPSHA); and (3) *Promoting Hydropower Development at Existing Non-Powered Dams Act* (PHDA) (collectively Hydropower Discussion Drafts) as drafted on March 22-23, 2017.

Hydropower Policy Modernization Act of 2017

HPMA, Section 3: Hydropower Licensing and Process Improvements (proposing to add a new Section 34, 35, 36, and 37 to the Federal Power Act)

Section 34. Hydropower Licensing and Process Improvements

“(a) *DEFINITION.* – In this section, the term ‘Federal authorization’—

(1) means any authorization required under Federal law with respect to an application for a license, license amendment, or exemption under this part; and

(2) includes any permits, special use authorizations, certification, opinions, or other approvals as may be required under Federal law to approve or implement the license, license amendment, or exemption under this part.”

“(b) *DESIGNATION AS LEAD AGENCY.* –

(1) *IN GENERAL.* – The Commission [Federal Energy Regulatory Commission] shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) *OTHER AGENCIES AND INDIAN TRIBES.* –

(A) *IN GENERAL.* – Each Federal, State, and local government agency and Indian tribe considered an aspect of an application for Federal authorization shall coordinate with the Commission and comply with the deadline established in the schedule developed for the project in accordance with the rule issued by the Commission under subsection (c).”....

“(c) *SCHEDULE.* –

(1) *COMMISSION RULEMAKING TO ESTABLISH PROCESS TO SET SCHEDULE.* –

Within 180 days of the date of enactment of this section the Commission shall, in consultation with the appropriate Federal agencies, issue a rule, after providing for notice and public comment, establishing a process for setting a schedule following the filing of an application under this part for review and dispositions of each Federal authorization.”

“(d) *TRANSMISSION OF FINAL SCHEDULE.* –

(1) *IN GENERAL.*– For each application for a license, license amendment, or exemption under this part, the Commission shall establish a schedule in accordance with the rule issued by the Commission under subsection (c). The Commission shall publically notice and transmit the final schedule to the applicant and each agency and Indian tribe identified under subsection (b)(2)(B)...”

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“(e). ADHERENCE TO SCHEDULE. – All applicants, other licensing participants, and agencies and tribes considering an aspect of an application for a Federal authorization shall meet the deadlines set forth in the schedule established pursuant to subsection (d)(1)...”

“(g). COMMISSION RECOMMENDATION ON SCOPE OF ENVIRONMENTAL REVIEW. – For the purposes of coordinating Federal authorizations for each project, the Commission shall consult with and make a recommendation to agencies and Indian tribes receiving a schedule under subsection (d) on the scope of the environmental review for all Federal authorizations for such project. Each Federal and State agency and Indian tribe shall give due consideration and may give deference to the Commission's recommendations, to the extent appropriate under Federal law.”

“(h) EXTENSION OF DEADLINE. –

“(1) APPLICATION. – A federal, State, or local government agency or Indian tribe that is unable to complete its disposition of a Federal authorization by the deadline set forth in the schedule established under subsection (d)(1) shall, not later than 30 days prior to such deadline, file for an extension with the Commission. “

“(2) EXTENSION. – The Commission shall only grant an extension under paragraph (1) if a the agency or tribe demonstrates, based on the record maintained under subsection (i), that complying with the schedule established under subsection (d)(1) would prevent the agency or tribe from complying with applicable Federal or State law. If the Commission grants the extension, the Commission shall set a reasonable schedule and deadline, that is not later than 90 days after the deadlines set forth in the schedule established under subsection (d)(1), for the agency or tribe to complete its disposition of the Federal authorization.”

Section 37. License Amendment Improvements

“(a)(7) FEDERAL AUTHORIZATION. – The schedule established by the Commission under section 34 for any project upgrade under this subsection shall require final disposition on all necessary federal authorizations (as defined in section 34), other than final action by the Commission, by no later than 120 days after the date on which the Commission issued a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable.”

“(a)(8) COMMISSION ACTION. – Not later than 150 days after the date on which the Commission issues a notice under paragraph (4)(A) or a written determination under paragraph (5), as applicable, the Commission shall take final action on the license amendment application.”

“(a)(9) LICENSE AMENDMENT CONDITIONS. – Any condition included in or applicable to a license amendment approved under this subsection, including any condition or other requirement of a Federal authorization, shall be limited to those that are –

(A) necessary to protect public safety; or

(B) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources, water supply, and water quality that are directly caused by the construction and operation of the qualified project upgrade, as compared to the environmental baseline existing at the time the Commission approves the application for the license amendment.”

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Promoting Close-Loop Pumped Storage Hydropower Act

CPSHA Section 2: Closed-Loops Pumped Storage Projects (proposing to amend Part I of the Federal Power Act)

"(a) DEFINITION. – In this section:

"(1) CLOSED-LOOP PUMPED STORAGE PROJECT.—The term "closed pumped storage project" means a project –

"(A) in which the upper and lower reservoirs do not impound or directly withdraw water from navigable waters; or

"(B) that is not continuously connected to a naturally flowing water feature."

"(d) LICENSE CONDITIONS. – With respect to a closed-loop pumped storage project, the authority of the Commission to impose conditions on a license under section 4(e), 10(a), 10(g), and 10(j) shall not apply, and any condition included in or applicable to a closed-loop pumped storage project licensed under this section, including any condition or other requirement of a Federal authorization, shall be limited to those that are—

(1) necessary to protect public safety; or

(2) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the project, as compared to the environmental baseline existing at the time the Commission completes its environmental review."

Promoting Hydropower Development at Existing Non-Powered Dams Act

PHDA Section 2: Promoting Hydropower Development at Existing Non-Powered Dams (proposing to amend Part I of the Federal Power Act)

"(a) EXEMPTIONS FOR QUALIFYING FACILITIES. – ...

(2) CONSULTATION WITH FEDERAL AND STATE AGENCIES. – In granting any exemption under this subsection, the Commission shall consult with –

(A) the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the State agency exercising administrative control over the fish and wildlife resources of the State in which the facility will be located in a manner provided by the Fish and Wildlife Coordination Act;

(B) any Federal department supervising any public lands or reservations occupied by the project; and

(C) any Indian tribe affected by the project.

(3) EXEMPTION CONDITIONS. –

(A) IN GENERAL. – The Commission shall include any exemption granted under this subsection only such terms and conditions that the Commission determines are –

(i) necessary to protect public safety; or

(ii) reasonable, economically feasible, and essential to prevent loss of or damage to, or to mitigate adverse effects on, fish and wildlife resources directly caused by the construction and operation of the qualifying facility, as compared

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to the environmental baseline existing at the time the Commission grants the exemption.

(B) NO CHANGES TO RELEASE REGIME. — No Federal authorization required with respect to a qualifying facility described in paragraph (1), including an exemption granted by the Commission under this subsection, may include any condition or other requirement that results in any material change to the storage, control, withdrawal, diversion, release, or flow operations of the associated qualifying nonpowered dam.

(7) EFFECT OF JURISDICTION. — The jurisdiction of the Commission over any qualifying facility exempted under this subsection shall extend only to the qualifying facility exempted and any associated primary transmission line, and shall not extend to any conduit, dam, impoundment, shoreline or other land, or any other project work associated with the qualifying facility exempted under this subsection.”